ACS's existing specified broadband services is not necessary to ensure that the charges, practices, or regulations in connection with these services are just, reasonable, and not unjustly or unreasonably discriminatory, so long as ACS is subject to the same treatment as nondominant carriers in relation to these services.[300] We conclude that subjecting ACS to a 60-day automatic grant period for discontinuance of its existing specified broadband services, and a 30-day comment period for notice to affected customers, is not necessary under section 10(a)(1), where nondominant carriers providing those same services are subject to a 30-day automatic grant period and 15-day comment period. However, to maintain sufficient customer protection and ensure the justness and reasonableness of ACS's practices in connection with these services, we predicate this finding upon ACS's compliance with the discontinuance rules that apply to nondominant carriers in the event it seeks to discontinue, reduce, or impair any of the non-TDM-based, packet-switched broadband services and non-TDM-based, optical transmission services for which we grant relief.[301] Similarly, we forbear from applying our domestic streamlined transfer of control rules to ACS as a dominant carrier of these services, conditioned upon treatment of ACS as a nondominant carrier for these services.[302]

110. We disagree with commenters that argue that forbearance should be denied because ACS controls bottleneck special access facilities and services that its competitors must access in order to provide their own broadband services.[303] As an initial matter, those commenters' concerns generally arise from the fact that ACS requested far greater forbearance relief than we grant in this order.[304] Here, we

[300] 47 C.F.R. §§ 63.03(b)(2), 63.71(a)(5), (b)(4), (c).

[301] *Id.* § 63.71; *see Qwest Omaha Order*, 20 FCC Rcd at 19435-36, para. 43.

[302] *See Qwest Omaha Order*, 20 FCC Rcd at 19435-36, para. 43. Specifically, we forbear from applying sections 63.03, 63.19, 63.21, 63.23, and 63.60-63.90 of our rules to ACS's provision of the specified existing broadband services within the Anchorage study area to the extent that, and only to the extent that, ACS would be treated as a dominant carrier under these rules for no reason other than its provision of those services within that study area. 47 C.F.R. § 63.03 (procedures for domestic transfer of control applications); *id.* §§ 63.60-63.90 (definitions, rules, and procedures that apply to the discontinuance, reduction, outage, and impairment of services). To the extent that ACS otherwise would be treated as a dominant carrier under these rules, that treatment shall continue. *See Qwest Section 272 Sunset Forbearance Order,* 22 FCC Rcd at 5235-39, paras. 55-62.

[303] Time Warner Telecom Comments at 2, 11-15 (arguing that ACS still controls certain bottleneck facilities necessary to serve enterprise customers); GCI Comments at 4 (claiming that forbearance would injure competition in the retail market for broadband services because ACS would be able to engage in a price squeeze on customers that rely on its special access facilities); Broadview Reply at 4 (claiming that "ACS's dominance over the transmission facilities needed to provide end users competitive broadband services is unquestionable"); Sprint Nextel Reply at 2 (arguing that ACS controls the access services necessary to compete in the wholesale and enterprise markets).

[304] *See, e.g.*, Time Warner Telecom Comments at 5 n.7 ("For purposes of this opposition, the Joint Commenters assume the most expansive interpretation of ACS's request for relief with respect to the market for broadband transmission services provided to the enterprise market: that ACS seeks relief from Title II and dominant carrier regulation for both its packetized and TDM based broadband services sold to both retail and wholesale enterprise customers in the Anchorage MSA."); GCI Comments at 3-4 (stating that "ACS claims to seek forbearance from regulation of broadband services 'consistent with that granted to Verizon Telephone Companies,' but fails to acknowledge that, unlike Verizon, ACS simultaneously seeks forbearance from regulations of its circuit-switched special access transmission facilities"); Broadview Reply at 4 (stating that "any current retail competition in Anchorage exists at the mercy of regulatory requirements that ensure that competitors have access to *wholesale* inputs that currently only ACS can make available in the vast majority of locations throughout Anchorage"); Sprint Nextel Reply at 2 (noting that ACS's request for forbearance is "far broader than the limited forbearance granted to Qwest in the Omaha MSA and broader than the forbearance sought by Verizon and deemed granted last March").

deny ACS's requested relief from dominant carrier regulation of its special access services generally, ensuring that they remain subject to the full range of dominant carrier tariffing, pricing, and other regulatory obligations.[305] In particular, our forbearance excludes TDM-based, DS1 and DS3 special access services. This will ensure that ACS's competitors will continue to be able to obtain these services for use as inputs to their own retail broadband services.[306]

111. Further, while we do grant forbearance from dominant carrier regulations for the existing enterprise broadband services identified by ACS, we do not grant forbearance from Title II as a whole, but instead ensure that ACS remains subject to the same regulatory obligations applicable to other nondominant telecommunications carriers.[307] As the Commission concluded in the *Qwest Section 272 Sunset Forbearance Order*, "dominant carrier regulation is not the most effective and cost-efficient way to address exclusionary market power concerns resulting from [an incumbent LEC's] control of any bottleneck access facilities that [the incumbent LEC's] competitors must access in order to provide competing services."[308] We find that to the extent dominant carrier regulation of ACS's existing specified broadband services addresses any exclusionary market power ACS may have in relation to those services, the burdens imposed by that regulation exceed its benefits.[309]

112. Our forbearance grant also is restricted to the identified broadband services that ACS presently offers, specifically its Transparent LAN Service, Transparent LAN Service Lite, LAN Extension Networking Service, and Video Transmission Services. We find that limiting our forbearance grant to existing services is appropriate because we cannot, on the record before us, conclude that ACS will lack market power with regard to any theoretical broadband telecommunications services that it might offer in the future, since both the precise nature of those services and the competitive conditions existing at that future time are unknown.[310]

113. In sum, subject to the precondition we identify above, we find that dominant carrier regulation of the specified, existing enterprise broadband services is not necessary to ensure that the charges, practices, classifications, and regulations in connection with these services will be just, reasonable, and not unreasonably discriminatory within the meaning of section 10(a)(1).

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[305] *See supra* Part IV.D.3.c. We find that concerns about the sufficiency of the Commission's existing regulation of the incumbent LECs' special access services are better addressed in the rulemaking context, where we can develop a comprehensive approach based on a full record that applies to all similarly-situated incumbent LECs. *See, e.g.*, Broadview Reply, Attach. 1 at 26.

[306] In addition, ACS remains subject to either section 251 unbundling obligations or the loop and subloop access condition by virtue of the *ACS UNE Order*, 22 FCC Rcd at 1960, para. 2 (conditioning forbearance relief from certain unbundling requirements on ACS's making loops and certain subloops available in certain wire centers in Anchorage at rates, terms, and conditions negotiated with GCI for Fairbanks, Alaska by the end of the established transition period until commercially negotiated rates are reached).

[307] *See infra* Parts IV.E.3 & IV.E.4.

[308] *Qwest Section 272 Sunset Forbearance Order*, 22 FCC Rcd at 5233, para. 52.

[309] *Id.*

[310] *See* ACS June 25, 2007 *Ex Parte* Letter at 5-6 (including within the scope of relief sought certain broadband services "whether offered by ACS now or in the future" and listing particular services ACS may offer in the future "only as examples of types of services for which ACS is seeking forbearance").

b. Protection of Consumers

114. Section 10(a)(2) of the Act requires us to determine whether dominant carrier regulation of ACS's existing and future broadband service offerings in Anchorage is necessary to protect consumers.[311] For reasons similar to those that persuade us that these regulations are not necessary within the meaning of section 10(a)(1), we also determine that their application to the existing ACS-specified services is not necessary for the protection of consumers. As we found above, ACS faces sufficient pressure from actual and potential competition to protect consumers, and to give ACS incentives to offer innovative services. In light of these conclusions, we find that the combination of dominant carrier tariffing requirements and the accompanying cost support can hinder, instead of protect, consumers' ability to secure better service offerings. Finally, as we explain below,[312] we are not forbearing from any public policy obligations applicable to these services, including those related to 911, emergency preparedness, customer privacy, or universal service, and consumers therefore do not lose protections in these important areas.

115. Conversely, we find that restricting our forbearance grant to those services ACS specified in its petition that it currently offers is necessary to protect consumers. ACS has not provided sufficient information regarding any broadband services, other than those specifically identified in its petition, and that it currently offers, to allow us to reach a forbearance determination under section 10(a).[313] Because the record before us does not indicate that ACS will face sufficient competitive pressure for future services if and when it ultimately offers them,[314] we cannot conclude that dominant carrier regulation of these as yet unoffered services is not necessary to protect consumers.

c. Public Interest

116. Section 10(a)(3) of the Act requires us to determine whether forbearance from dominant carrier regulation for ACS's existing and future broadband service offerings in Anchorage is consistent with the public interest.[315] In making this determination, section 10(b) of the Act directs us to consider whether forbearance from enforcing the provisions at issue will promote competitive market conditions, including the extent to which forbearance will enhance competition among providers of telecommunications services. If we determine that forbearance will promote competition among providers of telecommunications services, that determination may be a basis for finding that forbearance is in the public interest.[316]

117. We agree with ACS that a deregulatory approach for its provision of the existing ACS-specified broadband services will serve the public interest by eliminating the market distortions that asymmetrical regulation of these services causes.[317] In particular, we find that dominant carrier regulation

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[311] 47 U.S.C. § 160(a)(2).

[312] *See infra* parts IV.E.3, IV.E.4.

[313] *Qwest Omaha Order*, 20 FCC Rcd at 19438, para. 50 (denying Qwest's petition with respect to the enterprise market because Qwest had failed to provide sufficient data for its service territory for the entire MSA to allow the Commission to make a forbearance determination).

[314] *See supra* para. 112.

[315] 47 U.S.C. § 160(a)(3).

[316] *Id.* § 160(b).

[317] *See, e.g.*, ACS June 29, 2007 *Ex Parte* Letter at 7.

impedes ACS's efforts to compete effectively with nondominant providers of these services. Such regulation keeps ACS from responding efficiently and in a timely manner to any market-based pricing promotions, including volume and term discounts, or special arrangements that its competitors may offer. In particular, dominant carrier regulation of the existing ACS-specified broadband services makes it unnecessarily difficult for ACS to negotiate arrangements tailored to the needs of its enterprise customers, because its tariff filings necessarily provide competitors with notice of their pricing strategies and competitive innovations.

118. Forbearance from the application of dominant carrier regulation to the existing ACS-specified broadband services also will promote the public interest by furthering the deployment of advanced services.[318] Indeed, forbearance in this case is entirely consistent with section 706 of the Act and Congress' express goals of "promot[ing] competition and reduc[ing] regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies."[319] Forbearance also is consistent with section 7(a) of the Act, which establishes a national policy of "encourag[ing] the provision of new technologies and services to the public."[320] In addition, for the reasons described above, we conclude that granting ACS this relief will help promote competitive market conditions and enhance competition among providers of telecommunications services as contemplated by section 10(b). By allowing ACS to compete more effectively in the provision of the broadband transmission services that it currently offers, forbearance from dominant carrier regulation of these services will enhance competition among providers in a manner consistent with the public interest. For these reasons, we disagree with commenters that contend that forbearing from the application of dominant carrier regulation to the petitioners' existing, non-TDM-based, packet-switched broadband services and existing, non-TDM-based, optical transmission services would be inconsistent with the public interest.[321]

119. Consistent with our determinations under sections 10(a)(1) and 10(a)(2),[322] we find that extending our forbearance from dominant carrier regulation to services that ACS does not presently offer would be contrary to the public interest. Specifically, because the record before us is insufficient to support a finding that ACS will lack market power with regard to these as yet unoffered services, we cannot conclude that forbearance in this instance would be consistent with the public interest.

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[318] Section 706(c)(1) of the 1996 Act, *codified at* 47 U.S.C. § 157 nt. The Commission has concluded that section 706 is not an independent grant of forbearance authority. *Deployment of Wireline Services Offering Advanced Telecommunications Capability, et al.*, CC Docket No. 98-147, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 24012, 24044-48, paras. 69-77 (1998), *recon. denied*, 15 FCC Rcd 17044 (2000).

[319] 1996 Act Preamble, 110 Stat. at 56; *see* 47 U.S.C. § 157 nt. In section 706 of the 1996 Act, Congress directed the Commission to encourage, without regard to transmission media or technology, the deployment of advanced telecommunications capability to all Americans on a reasonable and timely basis through, among other things, removing barriers to infrastructure investment. Section 706 is reproduced in the notes to section 157 of the Act. *See* 47 U.S.C. § 157 nt. As we found in the *Wireline Broadband Internet Access Services Order*, regulation that constrains incentives to invest in and deploy the infrastructure needed to deliver broadband services is not in the public interest. *Wireline Broadband Internet Access Services Order*, 20 FCC Rcd at 14878, para. 45.

[320] 47 U.S.C. § 157(a).

[321] *See, e.g.*, Time Warner Telecom Comments at 11-15; Broadview Reply at 6; Sprint Nextel Reply at 1-3.

[322] *See supra* Parts IV.E.1.a and IV.E.1.b.

2. *Computer Inquiry* Requirements

120. As stated previously,[323] we construe ACS's petition as requesting relief from the *Computer Inquiry* obligations that apply to ACS in connection with any broadband information service it may provide in Anchorage. The *Computer Inquiry* rules require that ACS: (a) offer as telecommunications services the basic transmission services underlying its enhanced services; (b) offer those telecommunications services on a nondiscriminatory basis to all enhanced service providers, including its own enhanced services operations;[324] and (c) offer those telecommunications services pursuant to tariff.[325] For ease of exposition, we refer to these requirements as the transmission access requirement, the nondiscrimination requirement, and the tariffing requirement, respectively.

121. For the reasons described above, we find that forbearance from these requirements satisfies sections 10(a)(1) and 10(a)(2). In particular, as found above, providers of these types of transmission services face significant competitive pressure from providers that can deploy their own facilities or rely on regulated special access inputs. We find that these competitive pressures are sufficient to ensure that ACS's rates and practices are just, reasonable, and not unjustly or unreasonably discriminatory and to protect consumers absent the *Computer Inquiry* requirements.

122. We conclude, however, that forbearance is not warranted with respect to the transmission access requirement or the nondiscrimination requirement because such forbearance would not be in the public interest pursuant to section 10(a)(3). These requirements apply to all non-BOC, facilities-based wireline carriers, including ACS's nondominant facilities-based competitors in the Anchorage study area, in their provision of enhanced services.[326] ACS itself asserts that removing any "regulatory asymmetry" under which ACS currently operates in that study area and subjecting it "to no less regulation than any competitive [LEC] providing interstate access services" will "promote the public interest."[327] Given this assertion, we find that forbearance from the *Computer Inquiry* transmission access and nondiscrimination requirements is not in the public interest within the meaning of section 10(a)(3), as it would confer a regulatory advantage on ACS in Anchorage vis-a-vis its facilities-based competitors offering information services.

123. In contrast, the reasons that persuade us to forbear from dominant carrier regulation generally with regard to ACS's existing specified broadband services also persuade us to forbear from the *Computer Inquiry* tariffing requirement to the extent ACS provides information services within the

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[323] *See supra* para. 112.

[324] *Computer II Final Decision*, 77 FCC 2d at 474-75, para. 231; *see CCIA v. FCC*, 693 F.2d 198, 205 (D.C. Cir. 1982).

[325] *Computer II Final Decision*, 77 FCC 2d at 475, para. 231. We note that, under the Commission's *Hyperion Forbearance Order*, which granted non-dominant carriers permissive detariffing of interstate interexchange access services, non-incumbent LECs, including ACS's competitors within the Anchorage study area, need not offer the basic transmission services underlying their enhanced services pursuant to tariff. *See Hyperion Telecommunications, Inc. Petition Requesting Forbearance, Time Warner Communications Petition for Forbearance, Complete Detariffing for Competitive Access Providers and Competitive Exchange Carriers*, CCB/CPD Nos. 96-3 and 96-7 and CC Docket No. 97-146, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 12 FCC Rcd 8596 (1997) (*Hyperion Forbearance Order*).

[326] *Computer II Final Decision*, 77 FCC 2d at 474-75, para. 231.

[327] ACS Petition at 56.

Anchorage study area in conjunction with those broadband services.[328] Therefore, like its non-incumbent LEC competitors, ACS will be free to offer any information service that incorporates its Transparent LAN Service, Transparent LAN Service Lite, LAN Extension Networking Service, and Video Transmission Services without, by virtue of such offering, being required to tariff the underlying telecommunications component of those services.[329]

124. This forbearance from the *Computer Inquiry* tariffing requirement does not extend to ACS's information services to the extent they incorporate telecommunications components other than ACS's Transparent LAN Service, Transparent LAN Service Lite, LAN Extension Networking Service, and Video Transmission Services. As with our analysis of dominant carrier regulation of ACS's broadband services,[330] we find that restricting our forbearance from *Computer Inquiry* obligations to services that incorporate these existing broadband telecommunications services is appropriate because we cannot conclude, on the record before us, that ACS will lack market power with regard to any as yet unoffered broadband telecommunications services. We also cannot find, on this record, that additional forbearance from the *Computer Inquiry* rules would meet the statutory forbearance criteria.

3. General Title II Economic Regulation

125. As part of its request for similar relief to that granted to Verizon by operation of law, ACS seeks forbearance from any economic regulation that would apply to it, under Title II and the Commission's implementing rules, in connection with its existing and future broadband services offerings in the Anchorage study area.[331] We first address this regulation as it applies to ACS as a common carrier or LEC. We then turn to this regulation as it applies to ACS as an incumbent LEC or independent incumbent LEC.

a. Regulation Applied to ACS as a Common Carrier or LEC

126. Title II and the Commission's implementing rules impose economic regulation on common carriers or LECs generally, regardless of whether they are incumbents or competing carriers. This regulation, though much less burdensome than the regulation imposed on dominant carriers, has been thought to provide important protections against unjust, unreasonable, and unjustly or unreasonably discriminatory treatment of consumers.[332] For example, section 201 of the Act mandates that all carriers

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[328] *See supra* Part IV.E.1.

[329] *See supra* note 334. As a practical matter, however, we note that the existing specified broadband services all appear to be transmission services that ACS chooses to offer on a common carrier basis today, and thus remain subject to the same Title II regulation applicable to nondominant carriers.

[330] *See supra* Part IV.E.1.

[331] In its June 25, 2007 *Ex Parte* Letter, ACS asserts that "[i]n this proceeding, ACS has used the phrase 'forbearance from Title II regulation' as shorthand for forbearance from classification as a 'telecommunications service' under the Communications Act." ACS June 25, 2007 *Ex Parte* Letter at 5. As an initial matter, ACS has not explained how a *classification* of its services is, in itself, a "regulation" or "provision of this Act" from which the Commission can forbear under section 10. 47 U.S.C. § 160(a). We note that certain "regulation[s]" and "provision[s] of this Act" do apply by virtue of a particular classification. With respect to such requirements, we find forbearance for enterprise broadband services is warranted in part, subject to the conditions discussed above. We otherwise deny forbearance for ACS's enterprise broadband services. *See* Parts IV.E.3, IV.E.4. We conclude that this analysis appropriately addresses ACS's request for forbearance for its enterprise broadband services.

[332] *See Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance for Broadband Personal Communications Services*, WT Docket No. 98-100, (continued....)

engaged in the provision of interstate or foreign communications service provide such service upon reasonable request, and that all charges, practices, classifications, and regulations for such service be just and reasonable.[333] Section 202 of the Act makes it unlawful for any common carrier to make any unjust or unreasonable discrimination in charges, practices, classifications, regulations, facilities, or services, or to make or give any undue or unreasonable preference or advantage to any person or class of persons.[334] All telecommunications carriers are obligated under section 251(a)(1) of the Act to "interconnect directly or indirectly with the facilities and equipment of other telecommunications carriers."[335] Section 251(b), moreover, imposes a number of duties on LECs, including the duty not to impose unreasonable or discriminatory conditions or limitations on resale of their telecommunications services,[336] the duty to implement number portability,[337] and the duty to provide competing telecommunications service providers with access to the LECs' poles, ducts, and conduits under just and reasonable rates, terms, and conditions.[338]

127. Although, as discussed above,[339] the Commission has relaxed tariffing, transfer of control, and discontinuance regulation for carriers that lack market power, nondominant carriers are still subject to limited regulation in these areas. In particular, section 214 of the Act requires common carriers to obtain Commission authorization before constructing, acquiring, operating or engaging in transmission over lines of communications, or discontinuing, reducing or impairing telecommunications service to a community.[340] The Commission's discontinuance rules for nondominant carriers require such carriers to file applications with the Commission and provide notice to the affected customers.[341] These applications are automatically granted on the 31st day unless the Commission notifies the applicant otherwise.[342] Moreover, to the extent they are permitted to file interstate tariffs, nondominant carriers must comply

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Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 16857, 16865-72, paras. 15-31 (1998) (*PCIA Forbearance Order*) (denying PCIA's request for forbearance from sections 201 and 202 of the Act and noting that these provisions "codify[] the bedrock consumer protection obligations of a common carrier").

[333] 47 U.S.C. § 201.

[334] *Id.* § 202.

[335] *Id.* § 251(a)(1).

[336] *See, e.g., id.* § 251(b)(1).

[337] *Id.* § 251(b)(2).

[338] *See, e.g., id.* §§ 224, 251(b)(4).

[339] *See supra* para. 7.

[340] 47 U.S.C. § 214. *See, e.g., Verizon Telephone Companies Section 63.71 Application to Discontinue Expanded Interconnection Service Through Physical Collocation*, WC Docket No. 02-237, Order, 18 FCC Rcd 22737, 22742, para. 8 (2003) (applying five factors to determine whether "reasonable substitutes are available" to consumers). In 1999, the Commission granted all carriers blanket authority under section 214 to provide domestic interstate services and to construct, acquire, or operate any domestic transmission line. *See Implementation of Section 402(b)(2)(A) of the Telecommunications Act of 1996, Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, Report and Order in CC Docket No. 97-11, Second Memorandum Opinion and Order in AAD File No. 98-43, 14 FCC Rcd 11364, 11372, para. 12 (1999); 47 C.F.R. § 63.01(a). We also note that, in certain instances, the Commission has granted conditional blanket discontinuance authority to carriers under section 214. *See Wireline Broadband Internet Access Services Order*, 20 FCC Rcd at 14907-08, paras. 100-101.

[341] 47 C.F.R. § 63.71(c).

[342] *Id.*

with the streamlined tariffing and notice requirements of part 61, subpart C of the Commission's rules.[343]

128. We conclude that ACS has failed to demonstrate that forbearance from these, and other, economic regulations that apply generally to nondominant telecommunications carriers and to LECs would meet the statutory forbearance criteria. Indeed, with respect to its interstate broadband telecommunications services, ACS seems to ask us to go beyond the relief the Commission has granted any competitive LEC or nondominant interexchange carrier and allow it to offer certain broadband telecommunications services free of Title II regulation, thus creating a disparity in regulatory treatment between ACS and its competitors.[344] We find, based on the record before us, that granting ACS such preferential treatment would be inconsistent with the market opening policies and consumer protection goals that led Congress and the Commission to impose these economic regulations on carriers that lack individual market power. For example, the protections provided by sections 201 and 202(a), coupled with our ability to enforce those provisions in a complaint proceeding pursuant to section 208, provide essential safeguards that ensure that relieving ACS of tariffing obligations in relation to the ACS-specified broadband services will not result in unjust, unreasonable, or unreasonably discriminatory rates, terms, and conditions in connection with those services.[345] Accordingly, we cannot find that enforcement of these statutory and regulatory requirements is not necessary to ensure that the "charges, practices, classifications, or regulations . . . for[] or in connection with [the broadband services at issue in this proceeding] are just and reasonable and are not unjustly or unreasonably discriminatory" within the meaning of section 10(a)(1).[346]

129. ACS also has not shown how continued enforcement of these economic regulation requirements in connection with the ACS-specified broadband services is not necessary for the protection of consumers within the meaning of section 10(a)(2) or how forbearance is consistent with the public interest within the meaning of section 10(a)(3).[347] On the contrary, disparate treatment of carriers providing the same or similar services is not in the public interest as it creates distortions in the marketplace that may harm consumers.[348] In particular, many of the obligations that Title II imposes on carriers or LECs generally, including interconnection obligations under section 251(a)(1) and pole attachment obligations under sections 224 and 251(b)(4), foster the open and interconnected nature of our communications system, and thus promote competitive market conditions within the meaning of section 10(b). Allowing ACS, but not its competitors, to avoid these obligations would undermine, rather than promote, competition among telecommunications services providers within the meaning of that provision. Moreover, in originally subjecting nondominant carriers to streamlined transfer of control, discontinuance, and tariffing requirements, the Commission necessarily determined that these

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[343] *See id.* §§ 61.18 *et seq.*

[344] We note that this request appears inconsistent with ACS's arguments that asymmetric regulation of its telecommunications services is impeding competition and that it should "be subject to no less regulation than any competitive local exchange carrier." *See* ACS Petition at 52, 56; *see* ACS June 29, 2007 *Ex Parte* Letter at 7 (arguing that ACS should be permitted to discontinue services using the streamlined procedures available to nondominant carriers).

[345] *See, e.g., SBC Advanced Services Forbearance Order*, 17 FCC Rcd at 27010, 27012, paras. 18, 21 (citing 47 U.S.C. §§ 201-02, 208); *PCIA Forbearance Order*, 13 FCC Rcd at 16865-72, paras. 15-31.

[346] 47 U.S.C. § 160(a)(1).

[347] *Id.* §§ 160(a)(2), (a)(3).

[348] *See, e.g., Wireline Broadband Internet Access Services Order*, 20 FCC Rcd at 14865, para. 17 (creating a regulatory and analytical framework that is consistent across different platforms that supports competing services).

requirements were needed to protect the public interest and competitive markets in situations where a carrier lacks market power.[349] Granting ACS, but not its competitors, forbearance from these and the other obligations that apply generally to common carriers, LECs, or nondominant carriers would result in disparate regulatory treatment for the same or similar services, create market distortions, and fail to protect consumers within the meaning of section 10(a)(2).[350] Accordingly, we deny ACS's forbearance request to the extent it seeks forbearance from Title II economic obligations, including those discussed above, that apply generally to telecommunications carriers or LECs.

b. Regulation Applied to ACS as an Incumbent LEC or Independent Incumbent LEC

130. Title II and the Commission's implementing rules also impose regulation on ACS in its capacities as an incumbent LEC and an independent incumbent LEC. For example, section 251(c) of the Act imposes interconnection, unbundling, and resale obligations on ACS in its capacity as an incumbent LEC. In addition, like other independent incumbent LECs, ACS is subject to structural separation requirements if it wishes to provide in-region, interstate, interexchange telecommunications services other than through resale.[351]

131. We conclude that the record before us does not show that forbearance from these, and other, economic regulations that apply generally to incumbent LEC or independent incumbent LECs would meet the statutory forbearance criteria. Indeed, the record contains no specific information regarding whether application of these regulatory requirements is not necessary to ensure that the "charges, practices, classifications, or regulations . . . for[] or in connection with [the ACS-specified broadband services] are just and reasonable and are not unjustly or unreasonably discriminatory" within the meaning of section 10(a)(1).[352] Nor does the record suggest how continued enforcement of these requirements in connection with the ACS-specified broadband services is not necessary for the protection of consumers or inconsistent with the public interest. We therefore deny ACS's forbearance request to the extent it seeks forbearance from Title II economic obligations, including those discussed above, that apply generally to incumbent LECs or independent incumbent LECs.[353]

4. Public Policy Regulation

132. As part of its request for similar relief to that granted to Verizon by operation of law, ACS seeks forbearance from any public policy regulation that would apply to it, under Title II and the Commission's implementing rules, in connection with its existing and future broadband services offerings in the Anchorage study area. We now turn to this request.

133. Title II and the Commission's implementing rules set forth numerous public policy requirements that apply generally to all carriers, regardless of whether they are incumbents or competing

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[349] *See, e.g., IXC Forbearance Order*, 11 FCC Rcd at 20776-77, paras. 84-85.

[350] 47 U.S.C. § 160(a)(2).

[351] 47 C.F.R. § 64.1903.

[352] 47 U.S.C. § 160(a)(1).

[353] We note that in the *ACS UNE Order*, the Commission granted ACS conditional forbearance from the unbundling requirements of section 251(c) in certain wire centers in the Anchorage study area. *See ACS UNE Order*, 22 FCC Rcd at 1959-60, paras. 1-2. Nothing in the present order contravenes the conditional forbearance in place as a result of the *ACS UNE Order*.

carriers. These requirements advance critically important national objectives, such as ensuring the sufficiency of universal service support mechanisms, promoting access to telecommunications services by individuals with disabilities, protecting customer privacy, and increasing the effectiveness of emergency services, among other objectives. For example, section 254(b) of the Act states that "[t]here should be specific, predictable, and sufficient Federal and State mechanisms to preserve and advance universal service."[354] Section 254(d) of the Act states that "[e]very telecommunications carrier that provides interstate telecommunications services shall contribute" to universal service.[355] These universal service provisions ensure that all Americans, including consumers living in high-cost areas, low income consumers, eligible schools and libraries, and rural health care providers, have access to affordable telecommunications services.[356]

134. Similarly, Congress enacted section 225 of the Act to require each common carrier offering voice telephone service to also provide telecommunications relay service (TRS) so that individuals with disabilities will have equal access to the carrier's telecommunications network.[357] Moreover, section 255 sets forth disability access network requirements, and 251(a)(2) prohibits telecommunications carriers from installing any "network features, functions, or capabilities" that do not comply with the disability access requirements in section 255.[358] With regard to customer privacy, certain provisions in section 222 of the Act restrict telecommunications carriers' use and disclosure of customer proprietary network information (CPNI).[359] In these provisions, Congress recognized that telecommunications carriers are in a unique position to collect sensitive personal information and that consumers maintain an important privacy interest in protecting this information from disclosure and dissemination.[360] Other section 222 provisions increase the effectiveness of emergency services by facilitating the provision of vital caller location and subscriber identification information to emergency service providers.[361] We note that ACS's obligations under the Communications Assistance for Law

[354] 47 U.S.C. § 254(b)(5). The Commission has emphasized that maintaining the long-term viability of universal service programs is a fundamental goal that must continue to be met in an evolving telecommunications marketplace in which customers are migrating to broadband service platforms. *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952, 24954-56, paras. 1-5 (2002).

[355] 47 U.S.C. § 254(d).

[356] *See generally id.* § 254.

[357] *Id.* § 225. TRS enables an individual with a hearing or speech disability to communicate by telephone or other device with a hearing individual. This is accomplished through TRS facilities that are staffed by specially trained communications assistants (CAs) using special technology. The CA relays conversations between persons using various types of assistive communication devices and persons who do not require such assistive devices. *See generally Telecommunications Relay Services and Speech-to-Speech Services for Individuals with Hearing and Speech Disabilities*, CC Docket No. 98-67, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 5140, para. 2 (2000).

[358] 47 U.S.C. §§ 251(a)(2), 255.

[359] *Id.* § 222(a)-(c), (f). CPNI is defined to include "(A) information that relates to the quantity, technical configuration, type, destination, location, and amount of use of a telecommunications service subscribed to by any customer of a telecommunications carrier, and that is made available to the carrier by the customer solely by virtue of the carrier-customer relationship; and (B) information contained in the bills pertaining to telephone exchange service or telephone toll service received by a customer of a carrier." *Id.* § 222(h)(1).

[360] *See generally id.* § 222.

[361] *Id.* § 222(d)(4), (g).

Enforcement Act (CALEA) are governed by the CALEA statute,[362] and ACS remains obligated to comply with those statutory requirements.

135. We find that ACS has not shown that forbearance from these and the other public policy requirements in Title II and the Commission's implementing rules meets the statutory forbearance criteria. We note that ACS does not seek forbearance from any universal service contribution obligations that arise from its provision of broadband services that include "telecommunications."[363] We believe that by excluding this relief from its forbearance request, ACS recognized that the public interest requires it to maintain its universal service support obligations. Nevertheless, we include those obligations in our forbearance analysis to ensure that there is no ambiguity with regard to ACS's continuing duty to include revenues from each of the ACS-specified broadband services in its federal universal service support calculations.

136. In particular, we conclude on the record before us that forbearing from the public policy requirements in Title II and the Commission's implementing rules would be inconsistent with the critical national goals that led to the adoption of these requirements. Neither ACS nor other parties have submitted evidence demonstrating that enforcement of these requirements is unnecessary to ensure that the "charges, practices, classifications, or regulations . . . for[] or in connection with [the ACS-specified broadband services] are just and reasonable and are not unjustly or unreasonably discriminatory" within the meaning of section 10(a)(1) of the Act,[364] or is not necessary for the protection of consumers within the meaning of section 10(a)(2) of the Act.[365] On the contrary, we believe that consumers will continue to receive essential protections from the continued application of these requirements in connection with ACS's packet-switched and optical broadband telecommunications services.

137. We further conclude based on the record that removing ACS's public policy obligations would be contrary to the public interest within the meaning of section 10(a)(3) of the Act. ACS itself asserts that removing any "regulatory asymmetry" under which ACS currently operates in the Anchorage study area and subjecting it "to no less regulation than any competitive [LEC] providing interstate access services" will "promote the public interest."[366] The Commission likewise has found that disparate treatment of carriers providing the same or similar services is not in the public interest as it creates distortions in the marketplace that may harm consumers.[367] Thus, exempting ACS from public policy obligations that apply to ACS's actual and potential competitors for the specified broadband services would undermine the public policy goals behind those obligations, and would fail to promote competitive market conditions in the manner contemplated by section 10(b) of the Act. Moreover, the Commission recently has found it in the public interest to extend a number of these obligations to entities that have not

[362] *Id.* § 229; *see also* Pub. L. No. 103-414, 108 Stat. 4279 (codified as amended in sections of 18 U.S.C. and 47 U.S.C.).

[363] ACS Petition at 7; ACS June 29, 2007 *Ex Parte* Letter at 7 n.22; *see* 47 U.S.C. § 254(a) (directing that "any other provider of interstate telecommunications [*i.e.*, any interstate telecommunications provider that does not provide interstate telecommunications services] may be required to contribute to" federal universal service support).

[364] 47 U.S.C. § 160(a)(1).

[365] *Id.* § 160(a)(2).

[366] ACS Petition at 56.

[367] *Wireline Broadband Internet Access Services Order*, 20 FCC Rcd at 14865, para. 17 (creating a regulatory and analytical framework that is consistent across different platforms that support competing services).

been classified as "telecommunications carriers" to protect competition and consumers.[368] In the face of these recent conclusions, we find no basis in the record to demonstrate why it is not in the public interest to retain these obligations for ACS. For these reasons, we deny ACS's forbearance request to the extent it seeks forbearance from the public policy requirements in Title II and our implementing rules.

V. EFFECTIVE DATE

138. Consistent with Section 10 of the Act and our rules, the Commission's forbearance decision shall be effective on Monday, August 20, 2007.[369] The time for appeal shall run from the release date of this order.[370]

VI. ORDERING CLAUSES

139. Accordingly, IT IS ORDERED that, pursuant to section 10 of the Communications Act of 1934, as amended, 47 U.S.C. § 160, ACS's Petition for forbearance IS GRANTED to the extent described herein and otherwise IS DENIED.

140. IT IS FURTHER ORDERED that, pursuant to sections 1, 2, 4(i), 4(j), 201, 202, 203, 205, 218, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 201, 202, 203, 205, 218, and 403, and section 1.3 of the Commission's rules, 47 C.F.R. § 1.3, sections 54.901(a), 54.903 and 69.3(e)(9) of the Commission's rules, 47 C.F.R. §§ 54.901(a), 54.903 and 69.3(e)(9) ARE WAIVED to the extent provided herein.

141. IT IS FURTHERED ORDERED that, pursuant to section 10 of the Communications Act of 1934, 47 U.S.C. § 160, and section 1.103(a) of the Commission's rules, 47 C.F.R. § 1.103(a), this Order SHALL BE EFFECTIVE on August 20, 2007. Pursuant to sections 1.4 and 1.13 of the Commission's rules, 47 C.F.R. §§ 1.4 and 1.13, the time for appeal shall run from the release date of this Order.

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[368] *See Universal Service Contribution Methodology*, WC Docket No. 06-122; CC Docket Nos. 96-45, 98-171, 90-571, 92-237; NSD File No. L-00-72; CC Docket Nos. 99-200, 95-116, 98-170; WC Docket No. 04-36, Report and Order and Notice of Proposed Rulemaking, 21 FCC Rcd 7518, 7538-43, paras. 38-49 (2006), *aff'd in part, vacated in part, Vonage Holdings Corp. v. FCC*, No. 06-1276 (D.C. Cir. June 1, 2007); *Implementation of the Telecommunications Act of 1996: Telecommunications Carriers' Use of Customer Proprietary Network Information and Other Customer Information; IP-Enabled Services*, CC Docket No. 96-115, WC Docket No. 04-36, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 6927, 6954-57, paras. 54-59 (2007); *IP-Enabled Services*, WC Docket No. 04-36, WT Docket No. 96-198, CG Docket No. 03-123, CC Docket No. 92-105, Report and Order, FCC 07-110 at paras. 17-31 (rel. Jun. 15, 2007).

[369] *See* 47 U.S.C. § 160(c) (deeming the petition granted as of the forbearance deadline if the Commission does not deny the petition within the time period specified in the statute); 47 C.F.R. § 1.103(a).

[370] *See* 47 C.F.R. §§ 1.4, 1.13.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary

APPENDIX
LIST OF COMMENTERS

Comments in WC Docket No. 06-109

Comments	Abbreviation
ACS of Anchorage, Inc.	ACS
General Communication, Inc.	GCI
Time Warner Telecom, Inc., Cbeyond Communications, LLC, and One Communications Corp	Time Warner Telecom

Replies in WC Docket No. 06-109

Replies	Abbreviation
ACS of Anchorage, Inc.	ACS
Broadview Networks, Covad Communications, Eschelon Telecom, Inc., Nuvox Communications, XO Communications, Inc., Xspedium Management Company LLC, and Yipes Enterprise Services Inc.	Broadview
General Communication, Inc.	GCI
Sprint Nextel Corporation	Sprint Nextel

STATEMENT OF CHAIRMAN KEVIN J. MARTIN

Re: Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area, Docket No. WC 06-109

Broadband access is essential to an expanding Internet-based information economy. Promoting broadband deployment is one of the highest priorities of the FCC. To accomplish this goal, the Commission seeks to establish a policy environment that facilitates and encourages broadband investment, allowing market forces to deliver the benefits of broadband to consumers. Today, we take another step in establishing a regulatory environment that encourages such investments and innovation by granting ACS's petition for regulatory relief of its broadband infrastructure and fiber capabilities. This relief will enable ACS to have the flexibility to further deploy its broadband services and fiber facilities without overly burdensome regulations.

The relief afforded to ACS is consistent with and similar to the relief provided in Commission decisions regarding broadband services, packet switching, and fiber facilities. In those decisions, the Commission determined to relax regulations where competition was significant and where regulations acted as a disincentive to deploy new broadband technologies. Accordingly, based on the specific market facts that have been placed before us, we are compelled under the "pro-competitive, deregulatory" framework established by Congress, as well as under section 10's forbearance criteria, to grant ACS relief from the continued application of legacy regulations.

JOINT STATEMENT OF COMMISSIONER MICHAEL J. COPPS AND COMMISSIONER JONATHAN S. ADELSTEIN, CONCURRING IN PART, DISSENTING IN PART

Re: *Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended, for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area, WC Docket No. 06-109.*

In today's decision, the Commission addresses a wide-ranging forbearance petition concerning the appropriate regulation of the incumbent local exchange carrier in the unique circumstances of Anchorage, Alaska. Anchorage is a relatively small market, geographically removed from the lower 48 states. Moreover, a competitive facilities-based carrier has extensively built out its network and has taken significant market share for certain services from the incumbent provider. Because we find that this Order is inconsistent in its consideration of these factors, we concur in part and dissent in part.

We support this Order's decision to grant conditional relief in Anchorage for certain services where there is clear evidence of a vigorous rivalry between the incumbent cable and wireline provider; where there are few, if any, other competitors seeking to enter the market; and where the principal competitors previously reached a long-term commercial agreement that may in fact foster competition in the mass market. However, we continue to have concerns with a general approach that suggests that consumers should be satisfied with only two providers. The goal of the Telecommunications Act of 1996 is to establish a competitive and de-regulatory telecommunications environment. While today's order reduces regulation by eliminating some incumbent obligations and demonstrates that the Commission can respond to a dynamic marketplace, the Commission relies on the intermodal efforts of a single alternative provider to conclude that sufficient competition exists. While we concur in the forbearance of certain regulations based on the aforementioned factors that affect the unique Anchorage market, we believe the statute contemplates more than just competition between a wireline and cable provider.

Moreover, the Commission is forced to craft a novel litany of conditions in order to grant forbearance in this case. While we appreciate the efforts of the parties and the Bureau to limit potential adverse effects of this decision on universal service, access charges, consumer prices, and for cost allocation purposes, here we create an almost entirely new regulatory structure out of whole cloth. It will be important for the Commission to monitor the effects of these safeguards, and we encourage the Commission to diligently verify whether its predictions about their sufficiency are accurate.

For business customers, this Order is a particularly mixed bag. We support the decision to deny relief from the Commission's existing pricing rules for "traditional TDM-based" special access services, for which relief the Order finds a lack of evidence about market shares and the development of competitive forces. Yet, in an inexplicable turn, the Commission forbears from the pricing rules for other special access services, referred to in this Order as enterprise broadband services. While we appreciate the Commission's effort not to rely explicitly on generalized marketplace conditions for these services or to characterize explicitly the marketplace as nationwide, in doing so it is left with an Order that it is devoid of virtually any analysis. The Order readily admits "that the record in this proceeding does not include detailed market information for particular enterprise broadband services in the Anchorage MSA." Much of the data pointed to for support is in fact for services offered by providers everywhere but Anchorage. In addition, the Commission finds that "potential" competition is sufficient to forbear from regulation. In places where substantial competition does not demonstrably exist, it seems that forbearance actually can make the problem worse as "potential" competitors will have even less ability to successfully

compete. These kinds of decisions are too important to be made without the in-depth market analysis that might support them. Recent Congressional hearings have demonstrated to us a growing impatience with policymaking via analysis-poor forbearance decisions. The Commission needs to mend its ways.

While we certainly appreciate the Order's decision to retain key interconnection, universal service, privacy, disabilities access, and other Congressionally-mandated provisions -- forbearance from which would have been devastating for consumers and competition -- we cannot support this Order's decision to forbear from rules that provide critical pricing protection. We hope that the grant of forbearance here, without analysis of specific market forces and conditions, is not an ominous sign for customers in other regions of the country, many who have fewer options than those available in Anchorage.

STATEMENT OF COMMISSIONER DEBORAH TAYLOR TATE

Re: Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area, Docket No. WC 06-109.

In this decision we once again recognize the significant facilities-based competition that exists in the Anchorage market between the incumbent local exchange carrier, ACS of Anchorage, Inc. (ACS) and other carriers such as General Communications, Inc. (GCI). I support moving away from regulation where the record shows that a competitive market exists, rendering those regulations unnecessary. Today's Order takes a carefully balanced approach, providing regulatory relief to the incumbent ACS in areas in which GCI has captured significant market share and is capable of serving a significant proportion of the consumers in the market over its own network, but denying relief where the state of facilities-based competitive entry does not yet warrant regulatory forbearance. Accordingly, I support today's Order removing legacy regulations where robust competition has rendered those regulations no longer necessary to maintain a competitive market.

STATEMENT OF COMMISSIONER ROBERT M. McDOWELL

Re: In the Matter of Petition of ACS of Anchorage, Inc. Pursuant to Section 10 of the Communications Act of 1934, as Amended (47 U.S.C. § 160(c)), for Forbearance from Certain Dominant Carrier Regulation of Its Interstate Access Services, and for Forbearance from Title II Regulation of Its Broadband Services, in the Anchorage, Alaska, Incumbent Local Exchange Carrier Study Area, WC Docket No. 06-109

I support the relief from regulation that is granted in this forbearance petition filed by ACS of Anchorage, Inc. (ACS). The Anchorage, Alaska study area is a unique market, where the incumbent local exchange carrier, ACS, faces significant facilities-based competition from other carriers, primarily General Communication Inc. (GCI). For instance, GCI purportedly has over one-half of the exchange access market and 60 percent of the high-speed Internet market in Alaska. In addition, the geographic location of Anchorage contributes to the special characteristics of that market that are not duplicated in any other market in the country. With regard to ACS's enterprise broadband services, forbearance from regulating those services is appropriate based on the level of competition it faces in the Anchorage market, not only from GCI but also from AT&T and other providers. I believe that a local market analysis, rather than a national market analysis, is the correct basis for determining whether this type of relief is warranted.

The competitive situation facing ACS, a rate-of-return carrier, in the Anchorage market provides a poster child for deregulation of the services covered in this order. Forbearance from regulation in this instance is good for everybody and should reap benefits for all concerned, including customers of the deregulated services, particularly in light of the conditions we impose.